

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 318 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAXMIBEN D/O NANJIBHAI

Versus

BACHUBHAI CHHOTABHAI VAGHARI

Appearance:

MR DIPAK R DAVE for Petitioners

MR EE SAIYED for Respondent No. 1

MR SR DIVETIA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/06/98

ORAL JUDGEMENT

Heard learned advocates Mr. Dave for the petitioner, Mr. Saiyed for opponent No.1 and Mr. Divetia, for opponent No.2.

This petition arises of the maintenance

proceedings lodged by the present petitioner under section 125 of the Criminal Procedure Code. The petitioner filed Criminal Misc. Application No. 176/92 in the court of the learned JMFC, Petlad, and claimed that the petitioner was married to the respondent No.1 and within two months after the marriage, she was driven out from the house. After the petitioner having been deserted by the respondent no.1, she gave birth to son-Vijay on 5th September, 1991. The petitioner examined herself and her parents to prove that she was married to the respondent no.1. The respondent no.1 examined himself and his wife Savita to establish that he had married Savita some 20 years ago and 5 children were born during the said wedlock, and that the said marriage was still subsisting. The respondent no.1 denied his marriage to the present petitioner no.1 and that the said Vijay was born out of such wedlock and also questioned the paternity of the child-Vijay. It is established on evidence that the petitioner no.1 was earlier married to another person. The petitioner no.1 failed to establish that the said marriage had been dissolved as contended by her. On appreciation of evidence brought on the record, the learned trial Judge recorded a finding that the petitioner no.1 was never married to the respondent no.1 nor was child Vijay born on account of the alleged marriage. The learned trial Judge, therefore, held that neither of the petitioners was entitled to maintenance from the respondent no.1. The learned trial Judge under his judgment and order dated 3rd February, 1995 rejected the said application.

Feeling aggrieved, the petitioner preferred Criminal Revision Application No. 22/95 before the learned Additional Sessions Judge, Kheda at Nadiad. The learned Additional Sessions Judge held that even if it is believed that the petitioner no.1 was married to the respondent no.1, while the first marriages of both the petitioner no.1 and the respondent no.1 were subsisting, such marriage would be a nullity in the eye of law and, therefore, also the petitioner no.1 would not be entitled to maintenance from the respondent no.1. Further with regard to the paternity of the child Vijay, it was found that even in birth certificate of child Vijay, the name of his father has been recorded as that of "Bachubhai Shanabhai Vaghri", while the name of the respondent no.1 herein is "Bachubhai Chhotabhai Vaghri". Considering this evidence also, the learned Additional Sessions Judge came to the conclusion that neither of the petitioners was entitled to maintenance from the respondent no.1. He, therefore, under his judgment and order dated 31st August, 1995, dismissed the Revision Application.

Feeling aggrieved, the petitioners have preferred the present petition under Article 227 of the Constitution of India.

Mr. Dave has submitted that the name of the father recorded in the birth certificate of the child Vijay is a minor discrepancy and requires to be ignored. He has relied upon the statement made by the respondent no.1 in his deposition to the effect that the second marriage of the petitioner no.1 was solemnised with the respondent no.1. He has, therefore, argued that once the respondent no.1 has accepted the fact that the petitioner no.1 was married to him, the onus of proving the paternity of the child Vijay was on the respondent no.1 and even if the child Vijay were an illegitimate child, he would be entitled to maintenance.

I am afraid, I can not accept the argument advanced by Mr. Dave. It is nobody's case that the child Vijay is an illegitimate child of the respondent no.1. Considering the entirety of the evidence, it can not be said that the courts below have erred in holding that the petitioner no.1 was not married to the respondent no.1, after the annulment of her first marriage and that child Vijay was not born on account of the said marriage. This court can not endeavour to re-appreciate the evidence and record its own findings. In view of the findings recorded by both the courts below, the judgments and orders passed by the learned trial Judge and the revisional court do not warrant any interference.

Petition is dismissed. Rule is discharged.
There shall be no order as to costs.

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JOSHI